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- A. Facility Map Identifying Waste Piles
- B. Scope of Work for a RCRA Facility Investigation
 - Appendix A. Interim Measures Workplan
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 - Appendix D. Interim Measures Construction Quality Assurance Plan
 - Appendix E. Reports
- C. Scope of Work for a Corrective Measures Study
- D. Scope of Work for the Corrective Measure Implementation
- E. January 10, 1995, Agreed Order in Commissioner of the Department of Environmental Management v. Refined Metals Corporation, Cause Number A-2521.
- F. Region V Model RCRA Quality Assurance Project Plan (QAPjP)

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "U.S. EPA"), filed its Complaint on November 21, 1990 in this action against Defendant, Refined Metals Corporation (hereinafter "Defendant" or "RMC"), pursuant to Sections 3008(a), (g), and (h) of the Resource Conservation and Recovery Act, as amended (hereinafter "RCRA"), 42 U.S.C. §§ 6928(a), (g), and (h), and Section 113(b) of the Clean Air Act (hereinafter "CAA"), 42 U.S.C. § 7413(b), alleging that Defendant violated requirements of RCRA and the CAA and regulations promulgated thereunder, at its facility in Beech Grove, Indiana (the "Refined Metals Facility");

WHEREAS, the Indiana Department of Environmental Management ("IDEM"), intervened in this action as a party plaintiff;

WHEREAS, Plaintiffs and Defendant, having recognized that settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree in order to compromise and settle the claims stated in the Complaint against the Defendant without further litigation;

NOW THEREFORE, without adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C.

§§ 1331, 1345, and 1355, and over the parties to this action.

The Complaint states a cause of action upon which the Court can grant relief against Defendant, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Venue is proper under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b) because the defendant's facility is located in this district and because the violations occurred in this district.

II. STIPULATIONS

Solely for the purpose of this Consent Decree, and without any admission of liability by Defendant, the parties stipulate to the following:

2. Refined Metals Corporation is a corporation organized and existing under the laws of the State of Delaware.

3. Defendant is the owner and operator of a former lead reclaiming facility located at 3700 South Arlington Avenue, Beech Grove, Indiana (hereinafter "Refined Metals Facility" or "Facility").

4. All operating activities at the Refined Metals Facility regulated under RCRA and the CAA have ceased, with the exception of those activities provided in this Consent Decree, and all Federal and State environmental compliance permits and interim status designations under RCRA and the CAA, are terminated and no longer in effect.

5. One of the principal aspects of the former operations at the Facility involved secondary lead smelting of non-ferrous metals and alloys, principally materials containing lead. As the former owner and operator of the Refined Metals Facility, Defendant is required to comply with this Consent Decree, RCRA, the CAA, and regulations promulgated thereunder.

6. The Refined Metals facility is a facility that contains hazardous waste management units as defined at 40 C.F.R. § 260.10.

7. Pursuant to 42 U.S.C. § 6925(e)(1), on November 19, 1980, Defendant obtained "interim status" to operate its hazardous waste piles, in the manner set forth in Part A of its RCRA permit application, pending the issuance of a final RCRA operating permit. As a result of Defendant's alleged failure to comply with Section 3005(e)(2) of RCRA, 42 U.S.C. 6925(e)(2), on November 8, 1985, pursuant to 42 U.S.C. § 6925(e)(2), the facility's waste piles allegedly lost "interim status." Defendant denies these allegations.

8. Defendant's facility includes the following units regulated under RCRA Subtitle C: a series of indoor and outdoor waste piles used to store batteries and lead-bearing wastes, and a surface impoundment used to collect surface water run-off.

9. E.P. toxicity analyses conducted by U.S. EPA on soil samples collected at the facility indicate that the soil samples are characteristic for lead and cadmium. These analyses were conducted prior to promulgation of the Toxicity Characteristic

Leaching Procedure (TCLP) rule pursuant to Sections 3001(g) and (h) of RCRA.

10. Hazardous constituents (lead and cadmium) may further migrate from the facility into the environment through the following potential pathways:

- a. migration of hazardous constituents into an aquifer from which down-gradient populations may obtain water supplies; and
- b. migration of hazardous constituents into the air.

11. On August 18, 1982, U.S. EPA granted to the State of Indiana Phase I interim authorization under Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out certain portions of the RCRA hazardous waste management program in Indiana. On January 31, 1986, Indiana received final authority to promulgate such regulations presently codified at 329 IAC Article 3.1, previously codified at 329 Article 3, 320 IAC Article 3, and 320 IAC Article 4 and 4.1.

12. The federally approved State regulations are enforceable by the United States pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). However, the Indiana Department of Environmental Management ("IDEM") has the authority to approve or disapprove any closure plan under this Decree, so long as Indiana is an authorized state, although U.S. EPA may comment on and participate in the review of such plans.

13. In the Complaint, the United States alleges that since November 8, 1985 through the present, Defendant has treated,

stored, and/or disposed of hazardous waste at the Refined Metals Facility without a permit, in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and has violated and continues to violate numerous federally approved Indiana Hazardous Waste Program regulations.

14. In the Complaint, the United States also alleges that Defendant has violated and continues to violate the federally approved Indiana Hazardous Waste Program regulations by failing to submit closure plans and failing to provide certain financial assurances at the Refined Metals Facility.

15. In the Complaint, the United States also alleges that Defendant has violated Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), because Defendant has released hazardous waste into the environment from the Refined Metals Facility.

16. Section 109 of the CAA, 42 U.S.C. § 7409, requires U.S. EPA to promulgate national ambient air quality standards ("NAAQS") for air pollutants in order to protect the public health and welfare.

17. In order to achieve the NAAQS within established time limits, Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to U.S. EPA for approval a state implementation plan ("SIP") which regulates the emissions of air pollutants from sources within the State. Upon approval, a SIP is federally enforceable.

18. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a

permanent or temporary injunction and/or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, whenever any person has violated, or is in violation of any requirement or prohibition of an applicable SIP.

19. On or about July 16, 1982, U.S. EPA approved 325 IAC 6-1-12 (now recodified at 325.1 and 326 IAC), which then became part of the Indiana SIP. See 47 Fed. Reg. 30972. This rule limits emissions of total suspended particulate matter from Refined Metals' blast furnace to 0.003 grains per dry standard cubic foot.

20. On or about April 19, 1988 U.S. EPA approved 325 IAC 15-1, part of the Indiana SIP. See 53 Fed. Reg. 12896. The rule (subsequently recodified at 325.1 and 326 IAC) limits lead emissions from Refined Metals' three baghouse stacks as follows:

M-1 stack	1.132 pounds/hour
M-2 stack	0.015 pounds/hour
M-3 stack	0.005 pounds/hour

21. The federally-approved Indiana SIP, including 326 IAC 6-1-12 and 326 IAC 15-1, is the "applicable implementation plan" within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b), that governs operations at the RMC facility.

22. In the Complaint, the United States alleges that Defendant exceeded and continues to exceed the SIP limits for particulate matter and lead at the Refined Metals Facility.

23. On January 10, 1995, the Defendant entered into an Agreed Order with IDEM concerning Defendant's alleged violations

of the Indiana SIP. In the Agreed Order, Defendant agreed to take specific action to address its alleged Clean Air Act violations, and to pay a civil penalty.

III. PARTIES BOUND

24. Each signatory to this Decree on behalf of Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind Defendant to this Decree.

25. This Consent Decree shall apply to and be binding upon Defendant, as well as Defendant's successors and assigns. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take action necessary to comply with the provisions hereof. This Consent Decree shall also apply to and be binding upon the United States and the State of Indiana.

26. Prior to any sale, assignment, or other transfer of Defendant's property or operations subject to this Consent Decree, Defendant shall provide to any such purchaser, assignee, or transferee written notification of this Consent Decree and of its binding effect upon said purchaser, assignee, or transferee. Defendant shall serve a copy of this written notification by certified mail, return receipt requested, to the addresses specified in Section XI at least sixty (60) days prior to such sale, assignment, or transfer. Until termination of this Consent Decree in accordance with Section XXIV, Defendant shall not sell,

transfer or assign the Memphis property or Memphis operations except with the prior written approval of the United States. In the event of a sale, transfer or assignment of the Memphis property or Memphis operations to an affiliate(s) of the Defendant, prior written approval by the United States is not required, and this Consent Decree shall apply to and be binding upon the affiliate(s).

27. Nothing in this Consent Decree shall relieve Defendant of its obligation to comply with the notice requirements at 40 C.F.R. § 270.72.

28. Within seven (7) days of entry of this Consent Decree, Defendant shall provide a copy of this Consent Decree to all contractors, subcontractors, laboratories, consultants, representatives, and agents retained to conduct or monitor any portion of the work to be performed pursuant to this Consent Decree. For any such person or entity retained thereafter, Defendant shall provide a copy of this Consent Decree upon the date of such retention.

IV. DEFINITIONS

29. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in RCRA and in the regulations promulgated thereunder, at 40 C.F.R. Parts 260 through 271, and 329 IAC 3.1, and as used in the CAA, 42 U.S.C. § 7413(b), 42 U.S.C. § 7602(e), 42 U.S.C. § 7411(a)3-5, and 326 IAC 6-1-12 and 326 IAC 15-1.

30. "Refined Metals Facility," "RMC Facility," and "Facility" mean the facility, as defined at 40 C.F.R. § 260.10 and 329 IAC 3.1-4-1, located at 3700 South Arlington Avenue, Beech Grove, Indiana.

31. "Responsible agent" means a corporate officer, such as a president, secretary, treasurer, or vice-president with authority to sign and approve, as defined in 40 C.F.R. § 270.11.

32. "Waste piles" include all indoor and outdoor waste piles used for the storage of hazardous waste (which includes spent lead-acid batteries) that exist or may have existed at the RMC Facility.

33. "Surface impoundment" means the surface impoundment at the RMC Facility used to collect surface water run-off.

V. STATEMENT OF PURPOSE

34. The objectives of this Decree are for the Defendant to: (a) effectuate the closure of Defendant's indoor and outdoor waste piles and the surface impoundment by submitting a closure plan, and a post-closure plan if applicable, to IDEM for approval and then for the Defendant to implement the plan(s) as approved; (b) perform a RCRA Facility Investigation ("RFI") to evaluate and determine thoroughly the nature and extent of the releases and potential releases of hazardous waste and hazardous constituents at the RMC Facility and to gather necessary data to support any Corrective Measures Study ("CMS"), and/or any

Interim/Stabilization Measures ("ISMs") approved by U.S. EPA; (c) allow for the performance of ISMs to control or abate threats to human health and/or the environment from releases and/or to prevent or minimize the further spread of contamination while long-term remedies are pursued; (d) as required by U.S. EPA, perform a CMS to develop and evaluate corrective measures alternative(s) and to recommend a final corrective measure(s) for the RMC Facility necessary to protect human health and the environment; (e) perform the final corrective measure(s) as required by U.S. EPA; and (f) pay a civil penalty to address the Clean Air Act and RCRA violations alleged in the United States' Complaint and the States' Complaint, at the Refined Metals Facility.

VI. COMPLIANCE REQUIREMENTS

Hazardous waste placement, storage, treatment and disposal.

35. As of October 1, 1997, Defendant shall not accumulate, store, treat or dispose of hazardous waste at the RMC Facility, except pursuant to a closure or corrective measure plan approved by U.S. EPA pursuant to this Consent Decree, or as may be allowed under, 40 C.F.R. §§ 262.34, 268.50, 261.6(a)(2)(iv), 266.80, and 329 IAC 3.1-7-1, 3.1-12-1, 3.1-6-1, 3.1-11-1, or a duly issued permit. In the event Defendant intends to accumulate, treat, store or dispose of hazardous waste at the RMC Facility, which may only be done pursuant to the previous sentence, Defendant must provide U.S. EPA and IDEM 60 days prior written notice.

This notice is not required for any accumulation, storage, treatment or disposal of hazardous waste in accordance with the an approved closure or corrective measure plan under this Consent Decree.

36. Immediately upon Defendant's signing of this Consent Decree, Defendant shall manage all existing waste piles at the RMC Facility so as to prevent and control wind dispersal, leachate creation, and run-on or run-off of leachate, as required by 40 C.F.R. §§ 265.251 and 265.253, and 329 IAC 3.1-10-1.

Closure.

37. Within ninety (90) days of lodging of this Consent Decree, Defendant shall submit to IDEM for approval a Closure Plan for all waste piles and the surface impoundment which meets the requirements of 40 C.F.R. Part 265, Subparts F and G, and 329 IAC 3.1-10-1(8), and shall concurrently submit a copy thereof to U.S. EPA. A map identifying all waste piles is attached as Exhibit A [Facility Map Identifying Waste Piles], which is incorporated herein by reference and made an enforceable part of this decree. EPA and IDEM also acknowledge that Defendant, in order to satisfy closure requirements, may utilize data collected for purposes of Corrective Action provided said data meets the quality assurance requirements for closure.

Within thirty (30) days of being notified of any deficiencies in the Closure Plan, or such longer time as agreed to by IDEM, after consultation with U.S. EPA, Defendant shall submit to IDEM and U.S. EPA a revised Closure Plan which corrects any deficiencies

identified by IDEM. Within ten (10) days of receipt of IDEM's approval of the Closure Plan, Defendant shall implement the Closure Plan in accordance with the schedule contained therein.

38. Within sixty (60) days of completion of closure of all waste piles and the surface impoundments at the RMC Facility, Defendant shall submit to U.S. EPA and IDEM a certification of closure executed by the RMC Facility owner or operator and an independent registered professional engineer, in accordance with 40 C.F.R. § 265.115 and 329 IAC 3.1-10-1.

Financial Assurance and Liability Coverage Requirements.

39. Within sixty (60) days of signing this Consent Decree, Defendant shall submit to Plaintiff written certification that the RMC Facility is in compliance with the financial assurance and liability coverage requirements set forth in 40 C.F.R. Part 265, Subpart H and 329 IAC 3.1-14. Defendant shall maintain such assurances and coverage for as long as required under 40 C.F.R. Part 265, Subpart H and 329 IAC 3.1-14.

40. Defendant agrees that unless and until it meets the 40 C.F.R. Part 265 Subpart H and 329 IAC 3.1-14-1 financial assurance and coverage requirements for all closure, post-closure, and corrective action activities at the RMC Facility as required by this Decree, Defendant shall not make payment of any kind on any loans extended to Defendant by Richard Swain.

Corrective Action.

41. Within forty-five (45) days of the lodging of this Consent Decree, Defendant shall submit to U.S. EPA a work plan

for a RCRA Facility Investigation ("RFI Work Plan"), incorporating the applicable provisions of Exhibit B [Scope of Work for a RCRA Facility Investigation]. The RFI Work Plan shall be subject to approval by U.S. EPA. The RFI Work Plan shall be designed to determine the presence, magnitude, extent, direction and rate of movement of any hazardous wastes and hazardous waste constituents, both within and beyond the RMC Facility boundaries, which wastes or constituents originated from hazardous waste management units or solid waste management units at the Facility. The RFI Work Plan shall set forth in detail the manner in which Defendant shall determine: (1) the presence or absence of hazardous wastes and hazardous constituents on and off the RMC Facility; (2) the nature and extent, and the rate of movement of contamination on and off the RMC Facility; (3) the possible routes of migration of hazardous wastes and hazardous constituents on and off the RMC Facility, including characterization of the geology and hydrology of the Facility which delineates possible routes of migration; and (4) the extent and potential for migration of hazardous wastes and hazardous constituents through each of the environmental media. EPA and IDEM acknowledge that Defendant may undertake the RCRA Facility Investigation and may implement Corrective Measures, as required by U.S. EPA, on a Facility-wide basis. EPA and IDEM also acknowledge that Defendant, for purposes of satisfying the Corrective Action requirements under this Consent Decree, may utilize data collected for purposes of closure activities

provided said data meets the quality assurance requirements for Corrective Action.

42. Upon review of the RFI Work Plan, U.S. EPA shall inform Defendant that the RFI Work Plan has been approved, approved as modified by U.S. EPA, or disapproved. Upon receipt of U.S. EPA approval or approval as modified of the RFI Work Plan, Defendant shall conduct the RFI in accordance with the RFI Work Plan, including any U.S. EPA modifications thereto, and the schedule contained therein. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a RFI Work Plan that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.

43. At any time during corrective action activities and subject to the approval of U.S. EPA, Defendant may propose to perform ISMs. Any such ISM shall be performed only as approved by U.S. EPA. If U.S. EPA requires Defendant have an ISM Workplan, procedures identical to those for review, approval, modification and/or disapproval of the RFI Workplan shall be followed.

44. Within sixty (60) days after U.S. EPA approval of the final RFI Report, Defendant shall submit to U.S. EPA a work plan for a Corrective Measures Study ("CMS Work Plan"), incorporating the applicable provisions of Exhibit C [Scope of Work for a Corrective Measures Study]. The CMS Work Plan shall be subject to approval by U.S. EPA.

45. Upon review of the CMS Work Plan, U.S. EPA shall inform Defendant that the CMS Work Plan has been approved, approved as modified by U.S. EPA, or disapproved. Upon receipt of U.S. EPA approval or approval as modified of the CMS Work Plan, Defendant shall conduct the CMS in accordance with the CMS Work Plan, including any U.S. EPA modifications thereto, and the schedule contained therein. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a CMS Work Plan that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.

Corrective Measure Implementation; Public Comment and Participation.

46. After Defendant has submitted and U.S. EPA has approved the CMS Final Report, and following the public review and comment period, U.S. EPA shall notify the Defendant in writing of the corrective measure(s) selected by U.S. EPA. If the corrective measure(s) recommended in the CMS Final Report is not the corrective measure selected by U.S. EPA after consideration of public comments, U.S. EPA shall inform the Defendant in writing of the reasons for that decision, and the Defendant shall modify the RFI/CMS and/or reports thereof based upon public comment if directed by U.S. EPA to do so.

47. The Administrative Record supporting the selection of the corrective measure will be available for public review at a repository for public documents in or near Indianapolis, Indiana.

48. No later than sixty (60) days after receiving the written notification referred to in Paragraph 46, Defendant shall

submit to U.S. EPA a Corrective Measures Implementation Program Plan ("CMI Program Plan"), incorporating the applicable provisions of Exhibit D [Scope of Work for the Corrective Measure Implementation]. The CMI Program Plan shall be subject to U.S. EPA approval.

49. Upon review of the CMI Program Plan, U.S. EPA shall inform Defendant that the CMI Program Plan has been approved, approved as modified by U.S. EPA, or disapproved. Upon receipt of U.S. EPA approval or approval as modified of the CMI Program Plan, Defendant shall implement the corrective measure(s) in accordance with the CMI Program Plan, including any U.S. EPA modifications thereto, and the schedule contained therein. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a CMI Program Plan that meets U.S. EPA's requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.

50. Within forty-five (45) days after Defendant believes it has completed the construction phase of the CMI, Defendant shall submit a draft CMI Report to U.S. EPA. Upon review of the draft CMI Report, U.S. EPA shall inform Defendant that the draft CMI Report has been approved, approved as modified by U.S. EPA, or disapproved. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a CMI Final Report that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.

Financial Assurance for Corrective Action.

51. Based on the remedy option selected by U.S. EPA, within 30 days of receipt of U.S. EPA's selected remedy decision, Defendant shall prepare and submit a cost estimate for the corrective action and, except as otherwise provided in this paragraph, shall provide financial assurance for corrective action within 90 days of receipt of U.S. EPA's selected remedy decision. If Defendant maintains that it does not possess adequate financial resources to provide sufficient financial assurance for the corrective action, Defendant shall provide adequate inability to pay documentation to U.S. EPA no later than submission of the cost estimate and, pursuant to paragraph 40 herein, continue to refrain from making any payments on any loans extended to Defendant by Richard Swain. U.S. EPA's evaluation of Defendant's ability to provide sufficient financial guarantee(s) to fund the corrective action shall be determinative, subject to Section XX (Dispute Resolution).

Agency Review and Approval of Document Submittals.

52. In accordance with the requirements of Exhibits B, C, and D, and any RFI/CMS/CMI work or program plan requiring monthly reports, beginning with the end of the first full month following the effective date of this Consent Decree, Defendant shall submit to U.S. EPA such reports no later than fifteen (15) days after the end of each monthly reporting period. Such reports shall at a minimum:

- a. describe the actions which have been taken toward achieving compliance with this Consent Decree;
- b. summarize the results of sampling and tests and other data received by the Defendant;
- c. discuss all tasks and actions completed during the past month, as well as such actions and tasks that are scheduled for the next month; and
- d. identify any other elements not completed as required and any problems or anticipated problems.

53. In addition to the monthly reports referred to in paragraph 52, Defendant shall provide draft and final plans or reports to U.S. EPA as required by and in accordance with the terms of this Consent Decree and any plan or report approved hereunder.

54. The reports required under Paragraphs 52 and 53 shall include a certification of compliance or noncompliance, as applicable, with any action required by this Decree or plan approved hereunder. If any required action has not been taken or completed in accordance with the Decree or plan, Defendant shall notify U.S. EPA of the reasons for the failure, the projected date for completion, and the probability of meeting the next requirement in the schedule. The notification does not excuse any noncompliance unless Defendant seeks and obtains relief in accordance with Section XXI (Force Majeure). If the compliance status changes with respect to any requirements of the Consent

Decree, Defendant shall also notify U.S. EPA in writing of the change in compliance status.

55. All submittals made under this Section shall be signed by a Responsible Agent of the Defendant under oath and shall include the following certification statement:

"I certify under penalty of perjury that the information contained in or accompanying this (submission) (document) is, to the best of my knowledge after thorough investigation, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

56. Within thirty (30) days of lodging of this Consent Decree, Defendant shall provide for Facility security, in accordance with the requirements of 40 C.F.R. § 265.14 and 329 IAC 3.1-10-1(3), including the requirement to maintain a fence in good repair.

Compliance With CAA.

57. In the event Defendant seeks to recommence operations at the RMC Facility, and EPA approves of such operation, Defendant shall comply with the January 10, 1995, Agreed Order in Commissioner of the Department of Environmental Management v. Refined Metals Corporation, Cause Number A-2521 ("State Order"), as amended, included as Exhibit E and incorporated herein by reference and made an enforceable part of this Consent Decree until termination of the State Order in accordance with the terms of the State Order. Upon termination of the State Order, Defendant must provide U.S. EPA and IDEM written notice at least

180 days prior to commencing or recommencing operations at the RMC Facility that are regulated by the CAA. Defendant must comply with the CAA.

VII. ADDITIONAL WORK

58. Consistent with the objectives of this Consent Decree, U.S. EPA may determine that certain additional tasks, including investigatory work, engineering evaluation and corrective measures, are necessary in addition to those required by this Decree and the plans and studies required thereby. If U.S. EPA determines that such additional work is necessary, U.S. EPA shall request in writing that Defendant perform the additional work and shall specify the basis and reasons for U.S. EPA's determination that the additional work is necessary.

59. Such requests for additional work shall not be incompatible or inconsistent with the reports previously approved by U.S. EPA or with closure activities previously approved by IDEM, unless it appears at the time the additional work is requested that the previous work may not be fully protective of human health or the environment. Defendant shall have the opportunity to meet with U.S. EPA to discuss the additional work U.S. EPA has requested and propose alternatives.

60. Defendant shall commence any additional work required under this Section within thirty (30) days of receipt of U.S. EPA's request and shall complete such work in accordance with an EPA-approved schedule.

VIII. SELECTION OF SUPERVISING CONTRACTORS

61. All aspects of the work to be performed by Defendant pursuant to this Consent Decree shall be under the direction and supervision of (a) qualified contractor(s), the selection of which shall be subject to disapproval by U.S. EPA. Within 10 days after Defendant signs this Consent Decree, Defendant shall notify U.S. EPA in writing of the name, title and qualifications of any proposed contractor. U.S. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Defendant proposed to change any contractor, Defendant shall give such notice to U.S. EPA and must obtain an authorization to proceed from U.S. EPA before any new contractor performs, directs or supervises any such work under this Consent Decree.

62. If U.S. EPA disapproves a proposed contractor, U.S. EPA will notify Defendant in writing. Defendant shall submit to U.S. EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of U.S. EPA's disapproval of the contractor previously proposed. U.S. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Defendant may select any contractor from that list that is not disapproved and shall notify U.S. EPA of the name of the contractor selected within 21 days of U.S. EPA's authorization to proceed.

63. If U.S. EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Defendant from meeting one or more deadlines in a plan approved by U.S. EPA pursuant to this Consent Decree, Defendant may seek relief under the provisions of Section XXI (Force Majeure) hereof.

IX. PROJECT COORDINATORS

64. On or before the effective date of this Consent Decree, U.S. EPA, IDEM, and Defendant shall designate Project Coordinators. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Decree. To the maximum extent possible, communications between U.S. EPA and Defendant, and all documents, reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Decree, shall be directed through the Project Coordinators.

65. Each party shall provide seven (7) days written notice of a change of its Project Coordinator.

a. The U.S. EPA Project Coordinators shall have the authority to halt any RFI/CMS work if, in his or her opinion, the work poses a significant threat to human health and the environment or if the work being done is not in accordance with the Scope of Work or an approved Work Plan.

b. During the course of implementation of the Consent Decree, the Project Coordinators shall, whenever possible,

attempt to resolve any disputes informally through good faith discussion of the issues.

X. QUALITY ASSURANCE

66. Defendant shall use U.S. EPA-approved quality assurance, quality control, and chain-of-custody procedures in all sample collections and analysis activities for all corrective action activities, including investigation and performance activities, in accordance with the requirements of Exhibit G [Region V Model RCRA Quality Assurance Project Plan (QAPjP)]. Such procedures shall be detailed in the RFI and CMS Work Plans.

67. Defendant shall make best efforts to ensure laboratory quality assurance, to include the following measures:

a. Defendant shall inform the U.S. EPA Project Coordinator in advance which laboratories will be used by Defendant.

b. Defendant shall include provisions in all laboratory service contracts that:

(i) U.S. EPA and U.S. EPA-authorized representatives shall have reasonable access to inspect and audit the laboratories;

(ii) such laboratories shall perform all analyses according to U.S. EPA methods (SW-846) or other methods approved by U.S. EPA. If methods other than U.S. EPA methods are to be used Defendant shall, sixty (60) days prior to the commencement of analyses, submit

all protocols to be used for analyses to U.S. EPA for approval;

(iii) such laboratories shall participate in a quality assurance/quality control program equivalent to that which is followed by U.S. EPA;

(iv) a performance audit may be conducted by U.S. EPA on the laboratories selected by the Defendants unless a U.S. EPA contract-lab is selected; and

(v) upon request by U.S. EPA, laboratories shall perform analysis of a reasonable number of known samples provided by U.S. EPA to demonstrate the quality of the analytical data.

68. Defendant shall use its best efforts to enforce contract provisions with laboratories used pursuant to this Consent Decree.

XI. SUBMITTAL OF DOCUMENTS

69. Documents, including reports, approvals, disapprovals and other correspondence to be submitted to the United States pursuant to this Consent Decree, shall be sent by U.S. certified mail to the following addresses, except as stated herein, and which are subject to change:

70. Three (3) copies of all RCRA documents to be submitted to the U.S. EPA should be sent to:

United States Environmental
Protection Agency Region V
RCRA Enforcement Branch
77 W. Jackson St., HRE-8J
Chicago, IL 60604-3590
Attn: Refined Metals Corp. - Project Coordinator

71. Documents to be submitted to IDEM should be sent to:

Thomas Linson, Branch Chief
Office of Solid & Hazardous Waste
Management Branch
Indiana Department of Environmental Management
105 S. Meridian St.
P.O. Box 6015
Indianapolis, Indiana 46206-6015
Attn: Refined Metals Corp.

Defendant shall submit to IDEM six (6) copies of its initial draft Closure Plan, and shall submit such number of copies of other documents as required by IDEM.

72. Documents to be submitted to the Department of Justice should be sent to:

United States Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: U.S. v. Refined Metals
DOJ Case 90-11-2-469

73. All plans required by this Consent Decree are enforceable requirements of this Consent Decree.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

74. At the request of the U.S. EPA, the Defendant shall provide split or duplicate samples to U.S. EPA of any samples collected by, or on behalf of, the Defendant. Defendant shall notify U.S. EPA not less than seventy-two (72) hours in advance

of any sample collection activity, provided, however, that Defendant shall notify U.S. EPA at least ten (10) days prior to any sampling relating to closure required under this Consent Decree. U.S. EPA shall provide its own sample containers.

75. Defendant may assert a confidentiality claim pursuant to 40 C.F.R. § 2.203(b), if appropriate, covering part or all of the information requested by this Consent Decree. Analytical data shall not be claimed as confidential by the Defendant. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies this information when it is submitted to U.S. EPA, it may be made available to the public without further notice to the Defendant. If the information is determined not to be confidential in accordance with Federal laws and regulations, the information may be made public by U.S. EPA in accordance with the provisions of 40 C.F.R. Part 2. U.S. EPA shall provide written notice to the Defendant in the event of any such determination.

76. Defendant agrees that it shall preserve and make available to U.S. EPA for inspection and copying during the pendency of this Consent Decree and for a minimum of six (6) years after its termination, all records and documents in Defendant's possession or in the possession of its divisions, employees, agents or consultants or contractors which relate in any way to this Consent Decree or to hazardous waste management and disposal at the Facility. At the conclusion of the six (6)

year period, and prior to any alienation of such records, Defendant shall make them available to U.S. EPA for its retention and shall provide copies of any such records to U.S. EPA upon U.S. EPA's request. If U.S. EPA determines that it does not want copies of the records, Defendant may dispose of such to the extent permitted by Federal and State law.

XIII. CIVIL PENALTY

77. Defendant shall pay a civil penalty of two hundred ten thousand dollars (\$210,000), plus interest calculated from the date of the Defendant's signature on this Consent Decree at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, to the United States of America. Payment shall be made in two installments: the first payment of \$70,000 shall be made within thirty (30) days of entry of this Consent Decree and shall include accrued interest on the entire \$210,000; the second payment of \$140,000 shall be made within 6 months of entry of this Consent Decree and shall also include accrued interest on the entire unpaid penalty. Each payment shall be made by Electronic Funds Transfer ("EFT" or "wire transfer"), to the United States Department of Justice lockbox bank, referencing the DOJ File Number 90-11-2-4690 and the U.S.A.O. file number 90 V 0553. Payment shall be made in accordance with instructions provided by the United States to the Defendant upon entry of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day. At the time of payment, copies of such payment

shall be sent to U.S. EPA and the Department of Justice to the address specified in Section XI of this Decree.

78. In calculating this penalty, the United States relied on financial information supplied by Defendant. Defendant hereby certifies that the information it has given to the United States regarding its financial status is true, correct and complete. The United States reserves all rights it may have to bring any action against Defendant, and the covenant not to sue in Section XVI, Paragraphs 90-91 shall not be effective, if this information is not true, correct and complete.

79. In addition to the payments required by Paragraph 77, Defendant shall pay over to the United States as an additional civil penalty twenty-five percent (25%) of all monies received by Defendant in excess of \$500,000 pursuant to any indemnification or contribution agreement and/or settlement and from any insurance policy or bond relating to conditions or occurrences at the Site, including insurance policies or bonds for property damage, environmental impairment, natural resources damages, or cleanup costs. Any such payments shall be due and payable within thirty (30) days after Defendant receives any such monies and shall be paid in the manner set forth in Paragraph 77. This additional penalty will be capped at \$500,000.

XIV. STIPULATED PENALTIES

80. The Defendant shall pay the following stipulated penalties for each failure to comply with any requirement set forth in this Consent Decree and all Exhibits hereto, including

any deadline in any plan required to be submitted and implemented pursuant to Section VI of this Consent Decree.

81. For purposes of this Consent Decree, three tiers of stipulated penalties shall apply:

a. Tier I noncompliance shall be defined as follows:

- (1) failure to commence or complete on time any work required pursuant to Section VI of this Consent Decree;
- (2) failure to provide on time the financial assurance required under this Consent Decree;
- (3) failure to provide on time the liability coverage required under this Consent Decree;
- (4) failure to submit on time the RFI Work Plan (including QAPjP), CMS Work Plan, or CMI Program Plan;

b. Tier II noncompliance shall be defined as follows:

- (1) failure to submit timely or adequate preliminary plans or reports; or
- (2) failure to submit timely or adequate final plans or reports;
- (3) failure to comply with any of the terms and conditions specified in Section II.20. of the State Order, except as otherwise provided in Tier III.

c. Tier III noncompliance shall be defined as follows:

(1) failure to comply with any requirement of this Consent Decree, not described in subparts a and b, above.

d. Stipulated penalties for the violations described above shall accrue in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day of Noncompliance</u>
Tier I Noncompliance:	
1st through 30th day	\$ 2,000
31st through 60th day	4,000
61st day and beyond	6,000
Tier II Noncompliance:	
1st through 30th day	\$ 1,000
31st through 60th day	2,000
61st day and beyond	3,000
Tier III Noncompliance:	
1st through 30th day	\$ 500
31st through 60th day	1,000
61st day and beyond	1,500

82. If any plan or report required to be submitted to U.S. EPA or IDEM for approval under Section VI herein is disapproved by U.S. EPA or IDEM, then the submission shall be deemed inadequate and a violation of this Consent Decree, and shall be subject to stipulated penalties beginning thirty days after Defendant receives notification from U.S. EPA or IDEM that the plan or report is disapproved, provided however that if a substitute acceptable to U.S. EPA or IDEM is submitted within the thirty day period, no stipulated penalties will be assessed.

83. All stipulated penalties begin to accrue on the day that performance is due or a violation of this Consent Decree occurs, and continue to accrue through the final day of correction of the violation.

84. Stipulated penalties shall accrue during any dispute resolution proceeding. Defendant shall pay all accrued sums, with interest at the rate set forth at 31 U.S.C. §3717 within thirty (30) days of Defendant's failure to file a petition pursuant to Section XX (Dispute Resolution), or within thirty (30) days of the Court's decision.

85. Stipulated penalties under this Section shall be paid within thirty (30) days of receipt of written notification of non-compliance from U.S. EPA or IDEM, such payment to be made in the manner prescribed in Section XIII above unless Defendant invokes dispute resolution (Section XX). The written notification shall be accompanied by a statement which identifies each instance of noncompliance, the date(s) of noncompliance, and the amount of payment. The payment shall be accompanied by a statement which identifies each instance of noncompliance, the date(s) of noncompliance, and the amount of payment.

86. Fifty percent of stipulated penalties shall be paid to the United States and fifty percent to IDEM for violations of the requirements of this Decree. Payment to the United States shall be in accordance with the requirements of Paragraph 77. Payment to IDEM shall be paid by cashier's or certified check payable to "Environmental Management Special Fund" and shall be tendered to

the attention of the Cashier, IDEM, at the address provided in Section XI.

XV. ACCESS TO THE FACILITY AND SAMPLES

87. U.S. EPA, IDEM, and their respective employees, contractors, and authorized representatives, upon presentation of proper credentials, are authorized at any reasonable time to enter and freely move about all property at the RMC Facility for the purpose of, inter alia: interviewing the Project Coordinator, his designated representative(s) or contractor personnel directly involved in any field work required by this Consent Decree at the Facility; inspecting records, operating logs, and contracts related to the performance under this Consent Decree; reviewing the progress of the Defendant in carrying out the terms of this Consent Decree; evaluating the compliance of the Defendant with the provisions of this Consent Decree; conducting such sampling and tests as U.S. EPA or IDEM or their representatives deem necessary for evaluating compliance with this Consent Decree; using a camera, sound recording, or other documentary type equipment for evaluating compliance with this Consent Decree; and verifying the reports and data submitted to U.S. EPA or IDEM by the Defendant under this Consent Decree. The Defendant shall permit such persons to inspect and copy all records, files, photographs, and other writings, including all sampling and monitoring data that pertains to work undertaken pursuant to this Consent Decree. In addition, Defendant shall insure that such persons have the authority to inspect at all reasonable times

laboratories used by Defendant or its contractors for analyses conducted under this Consent Decree.

88. To the extent that work required by this Consent Decree must be done on property not owned or controlled by Defendant, Defendant will use its best efforts to obtain site access agreements from the present owner(s) of such property within forty-five (45) days of lodging of this Consent Decree. Such efforts to secure access shall include the transmission by defendants to the property owner of a formal request for access, to be sent by certified letter, return receipt requested, within the forty-five (45) calendar day period. Any such access agreement negotiated with adjacent property owners shall be incorporated by reference into this Consent Decree. Defendant shall report fully on its efforts to secure access in its reports submitted pursuant to Section VI herein. In the event U.S. EPA obtains access for Defendant, Defendant shall undertake the necessary activities in accordance with this Consent Decree.

89. This Section in no way limits any right of entry available to U.S. EPA or IDEM pursuant to applicable Federal or State laws, regulations, or permits, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. §6927.

XVI. COVENANT NOT TO SUE; RESERVATION OF RIGHTS

90. In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 92-94 of this Decree, the United States

covenants not to sue or to take administrative action against Defendant:

a. pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for those civil claims relating to the Refined Metals Facility which arose prior to the date of Defendant's signing of this Decree and which have been alleged in the Complaint;

b. pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for those civil claims arising under the Land Disposal Restrictions, 40 C.F.R. § 268 et seq., relating to the indoor waste piles at the Refined Metals Facility which arose prior to the date of Defendant's signing of this Decree; and

c. pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for those civil claims relating to the Refined Metals Facility which arose prior to the date of Defendant's signing of this Decree.

d. pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, for those civil claims relating to the Refined Metals Facility which arose prior to the date of Defendant's signing of this Decree and which have been alleged in the Complaint.

91. In consideration of the actions that will be performed by the Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 92-94 of this Decree, IDEM covenants not to sue or to take administrative

action against Defendant for violations alleged in the State's Complaint.

92. The United States and IDEM expressly reserve, and this Consent Decree shall be without prejudice to, any right of the United States or IDEM: (1) to pursue any remedies available to the United States or IDEM for any violation of this Decree; (2) except to the extent otherwise limited by this Consent Decree, to assert claims for civil penalties, injunctive relief, or any other remedy available to the United States or IDEM, for any violation of Federal or State laws, regulations, or permit conditions, and in particular, any claims for violations of the CAA subsequent to the date Defendant signed this Consent Decree; (3) except to the extent otherwise limited by this Consent Decree, to impose or enforce any permit requirement pursuant to RCRA or the CAA; (4) to bring any action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973; (5) to bring any action pursuant to Sections 120 and 303 of the CAA, 42 U.S.C. §§ 7420 and 7603; and (6) to take any action and assert any claim relating to any criminal liability of the Defendant.

93. The United States expressly reserves, and this Consent Decree shall be without prejudice to, any right of the United States: (1) to take any action and assert any claim pursuant to EPCRTKA, 42 U.S.C. § 11001 et seq.; and (2) to take any action and assert any claim pursuant to CERCLA, including Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. Further, except to the extent otherwise limited by this Consent

Decree, incorporation herein of the State Agreed Order shall in no way limit the United States' CAA authority to enforce the federally approved SIP limits for particulate matter and lead at the Refined Metals Facility.

94. IDEM expressly reserves, and this Consent Decree shall be without prejudice to, any right of IDEM to take any action and assert any claim pursuant to Ind. Code Section 13-7-8.7.

95. This Consent Decree shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, which any person not a party hereto may have under RCRA, CERCLA, CAA or any other statutory, regulatory or common law authority relating to the Defendant and the RMC Facility.

96. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the RMC Facility of Defendant, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 90-91.

97. The execution or performance of this Consent Decree by Defendant shall not constitute an admission of any fact or legal issue, or of any liability or wrongdoing relating to the RMC Facility. Defendant expressly reserves the right to raise all legal and equitable rights, claims and defenses which it may have under RCRA, CAA or any other legal authority in any proceeding initiated by Plaintiffs, except the Defendant is precluded from challenging the validity of the Consent Decree.

98. This Consent Decree in no way relieves Defendant of its responsibility to comply with all applicable Federal, State and local laws, regulations, and permit conditions. This Consent Decree is neither a permit nor a modification to a permit.

XVII. PRECLUSION OF CLAIMS AGAINST THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

99. Defendant agrees not to make any claims pursuant to Sections 106(b), 111 or 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 or 9612, or any other provision of law, directly or indirectly against the United States or the Hazardous Substance Response Trust Fund established by CERCLA for costs incurred in complying with this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

XVIII. COSTS

100. Each party to this action shall bear its own costs and attorney's fees.

XIX. MODIFICATIONS

101. Schedules specified in this Consent Decree for completion of work may be modified by agreement of U.S. EPA and Defendant. All such modifications shall be made in writing. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XX. DISPUTE RESOLUTION

102. In the event that the parties cannot resolve a dispute with respect to this Consent Decree, then the interpretation advanced by the United States shall be considered binding unless Defendant invokes the dispute resolution provisions of this Section.

103. If, in the opinion of any party, there is a dispute with respect to any obligation imposed by this Consent Decree or any plan incorporated therein, that party shall send a written notice to the other parties which outlines the nature of the dispute and suggests a means for its resolution. Any such request shall be followed by a period of informal negotiations which shall not extend beyond thirty (30) days from the date when the notice was sent unless the parties agree otherwise.

104. If the informal negotiations are unsuccessful, the position of the United States or, with respect to those matters for which Indiana is authorized, IDEM, shall control unless Defendant files with the court a petition which shall describe the nature of the dispute and include a proposal for its

resolution. Defendant's petition must be filed no more than twenty (20) days after delivery of Plaintiff(s)'s written notice of termination of informal negotiations. Plaintiff(s) shall then have twenty (20) days to respond to the petition. In any such dispute, Defendant shall have the burden of proving that Plaintiff(s)'s position is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. If Defendant does not sustain that burden, the Plaintiff(s) shall prevail. In any instance in which the United States has compiled a record documenting a final agency decision, as contemplated in Section VI of the Consent Decree, any judicial review of the agency action shall be on the Administrative Record.

105. Invocation of the dispute resolution provisions of this Section shall not extend or postpone any obligations not directly in dispute imposed by this Decree, unless U.S. EPA agrees otherwise. Stipulated penalties with respect to a disputed matter, if any, shall continue to accrue but payment shall be stayed pending resolution of the dispute and payable upon any decision adverse to Defendant, in accordance with Section XIV (Stipulated Penalties).

XXI. FORCE MAJEURE

106. A "Force Majeure" event for purposes of this Decree is defined as any event that is caused by circumstances entirely beyond the control of Defendant, or any entity controlled by or under the common control of Defendant including the Defendant's consultants and contractors, and that Defendant could not have

foreseen and prevented, that delays or prevents the performance of any obligation under this Consent Decree. Failure to obtain a permit is not a force majeure event.

107. When circumstances are occurring or have occurred that can reasonably be anticipated to cause a delay in achieving compliance with any requirement set forth in this Consent Decree, or in any plan developed hereunder within the time allowed under the Decree, whether or not due to a "Force Majeure" event, Defendant shall orally notify U.S. EPA by no later than five business days after Defendant obtains or should have obtained information indicating that a delay reasonably can be anticipated to be encountered. Thereafter, by no later than ten business days after Defendant obtains or should have obtained information indicating that a delay reasonably can be anticipated to be encountered, Defendant shall submit written notification to U.S. EPA which includes a detailed explanation of the precise cause(s) for and anticipated duration of any such delay; the measures taken and to be taken by Defendant to prevent or minimize the delay; the timetable for implementation of such measures; the anticipated date such requirement will be achieved; a statement as to whether Defendant is claiming a "Force Majeure"; and the bases for Defendant's claim of "Force Majeure". The Defendant shall adopt all reasonable measures to avoid or minimize any such delay. To the extent practicable, oral notice under this paragraph must include all of the information required to be included in a written notification. Failure to notify within the

time period specified above shall constitute a waiver of any claim of "Force Majeure" with respect to the particular event involved. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties. U.S. EPA shall notify Defendant in writing of its agreement or disagreement after receipt of Defendant's written notification.

108. If the United States agrees that a delay is or was attributable to a "Force Majeure" event, the parties shall, by written agreement, modify the compliance schedule to provide such additional time as may be necessary to allow the completion of the specific phase of the required activity and/or any succeeding phase of the activity affected by such delay, not to exceed the actual duration of the delay.

109. If the United States and Defendant are unable to agree as to whether the reason for the delay was a "Force Majeure" event, or on a stipulated extension of time, then the Dispute Resolution provisions of Section XX shall apply. Defendant shall have the burden of demonstrating that the event was a "Force Majeure" event, that the duration of the delay caused by such event is or was warranted under the circumstances, and that, as a result of the delay, a particular extension period is appropriate.

110. Increased costs of complying with this Consent Decree, or Defendant's financial inability to carry out the

provisions of this Consent Decree, shall not be considered a "Force Majeure" event.

XXII. EFFECTS OF CHANGES IN STATE AUTHORIZATION

111. If, prior to the termination of this Consent Decree, the State of Indiana pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), promulgates and adopts corrective action regulations which are approved by the federal government, then the federally-approved state regulations rather than the federal standards shall apply to and be enforceable under this Consent Decree unless such standards would require the revision of a Plan previously submitted and approved pursuant to Section VI of this Consent Decree.

XXIII. CONTINUING JURISDICTION OF THE COURT

112. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXIV. TERMINATION

113. Once Defendant determines it has fully complied with all of the requirements of this Consent Decree, and is continuing to comply with the reporting requirements, if any, of this Consent Decree, it shall submit to U.S. EPA a certification of compliance. The certification shall contain the following

statement, signed by a responsible corporate official of the Defendant:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this certification is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If U.S. EPA concurs that Defendant has fully satisfied the requirements of this Consent Decree, the parties shall file a joint motion with the Court to terminate this Consent Decree. After passage of 120 days from Defendant's submission to U.S. EPA of a certification of compliance, Defendant may file a motion with the Court to terminate this Consent Decree. U.S. EPA reserves its right to oppose or support Defendant's motion.

XXV. NOTICE REQUIREMENTS

114. The parties acknowledge that final approval by the United States and the entry of this Consent Decree are subject to the Public Notice and Comment requirements of 28 C.F.R. § 50.7. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party

and the terms of the agreement may not be used as evidence in any litigation between the Parties.

Date and entered this 31st day of August, 1998.

Sarah E. Barker
HONORABLE JUDGE SARAH E. BARKER
UNITED STATES DISTRICT COURT

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Lois J. Schiffer
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

5/16/98
Dated

Leonard M. Gelman
LEONARD M. GELMAN
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
999 18th Street, Suite 945 North
Denver, Colorado 80202

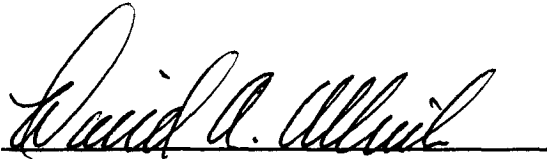
7-9-98
Dated

Consent Decree: United States of America and the Indiana
Department of Environmental Management v. Refined Metals
Corporation, Civil Action No. IP902077C.

JUDITH A. STEWART
United States Attorney for the
Southern District of Indiana
46 East Ohio Street
Indianapolis, Indiana 46204

Dated

Consent Decree: United States of America and the Indiana
Department of Environmental Management v. Refined Metals
Corporation, Civil Action No. IP902077C.



DAVID A. ULLRICH
Acting Regional Administrator
U.S. Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, Illinois 60604



Dated

Consent Decree: United States of America and the Indiana
Department of Environmental Management v. Refined Metals
Corporation, Civil Action No. IP902077C.

FOR THE PLAINTIFF-INTERVENOR INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

JOHN HAMILTON
Commissioner, IDEM

Dated _____

JEFFREY MODISETT, Indiana
Attorney General
by: ANITA WYLIE

Date

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Consent Decree: United States of America and the Indiana
Department of Environmental Management v. Refined Metals
Corporation, Civil Action No. IP902077C.

FOR THE DEFENDANT REFINED METALS CORPORATION:



[RESPONSIBLE CORPORATE OFFICIAL]

Ari D. Levine

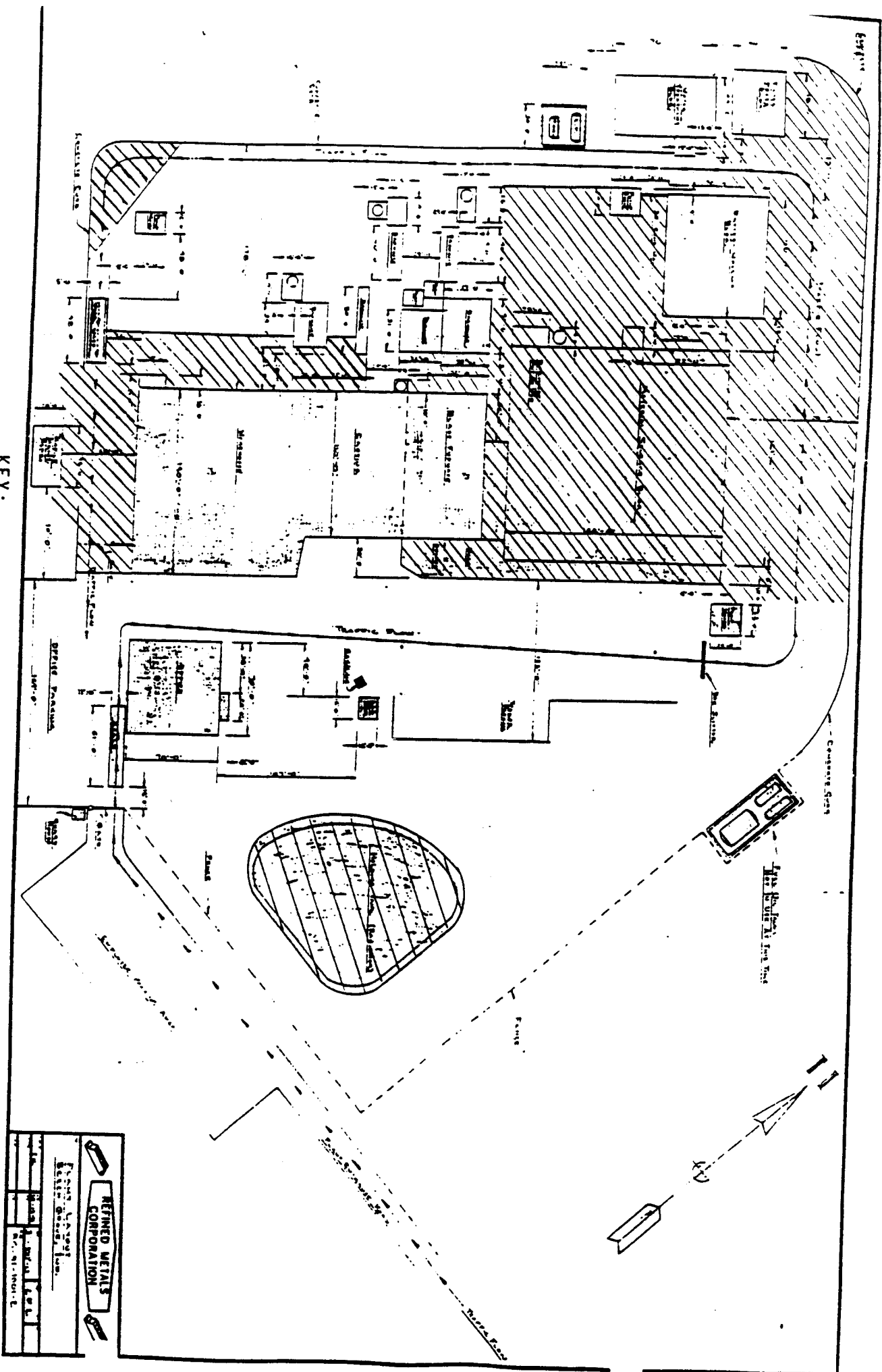
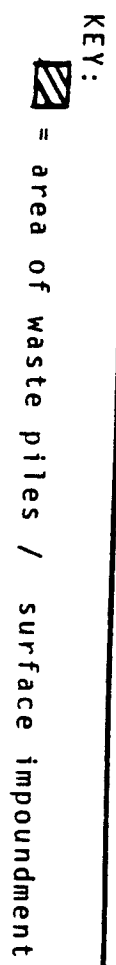
Vice President + Secretary

2/26/98

Dated

UNITED STATES OF AMERICA,
Plaintiff,
INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Intervening Plaintiff,
v.
REFINED METALS CORPORATION,
Defendant.

EXHIBIT A: Facility Map Identifying Waste Piles



NOTE:

VOLUMINOUS PAGES OF ATTACHMENTS
HAVE BEEN OMITTED FROM THIS COPY IN THE
INTEREST OF CONSERVING PAPER.

SHOULD YOU NEED COPIES OF THESE ADDITIONAL
MATERIALS, PLEASE CONTACT MR. ANASTASIO